

## REMARKS

### **Introduction**

- Claims 29-53, 56, and 57 are now pending in this application.
- Claim 57 has been added. It is believed that no additional excess claims fees are necessitated by this new claim; nevertheless, if any additional excess claims fees are required, please charge those fees to our Deposit Account 12-0425.
- Claims 29, 36, 40, 43, 46-50, and 56 have been amended to define still more clearly what Applicants regard as their invention; these changes have been made for the purposes of clarification only, and no change in scope of the claims is either intended or believed to be effected by the changes.
- Claims 29 and 51-53 are in independent form.

### **Request for Interview**

This Amendment is believed clearly to place this application in condition for allowance. Should the Examiner nevertheless believe that issues remain outstanding, the Examiner is respectfully requested to contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue. Thus, this paper shall serve as a formal request for an Interview, to be held before the Examiner issues a next Action, unless such Action is a Notice of Allowance.

### **The rejection under 35 U.S.C. § 112**

Claim 56 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner states that the phrase "in particular" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

The claims have been carefully reviewed and amended as deemed necessary to ensure that they conform fully to the requirements of Section 112, second paragraph, with special attention to the points raised in the Office Action. The phrase "in particular" has been removed from claim 56.

It is believed that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

### **The rejections under 35 U.S.C. 103**

- Claims 29-45, 51-53, and 56 were rejected under 35 U.S.C. § 103(a) as being obvious from U.S. Patent No. 3,701,454 to Thorp in view of U.S. Patent No. 3,435,977 to Jacke.
- Claims 46-48 and 50 were rejected under 35 U.S.C. § 103(a) as being obvious from Thorp in view of Jacke and U.S. Patent No. 3,811,817 to Mansnerus.
- Claims 48 and 49 were rejected under 35 U.S.C. § 103(a) as being obvious from Thorp in view of Jacke in view of U.S. Patent No. 6,592,363 to Hoffmann.

Applicants submit that independent claims 29 and 51-53, together with the claims dependent therefrom, are patentably distinct from the cited references for at least the following reasons.

Claim 29 is directed to a fuel can with a can body containing a fuel filling and a cover lid which is formed by a sealing foil and which by sealing onto a flange like rim of the can body is permanently connected to the can body. The cover lid is designed in such a manner that at least one opening in the cover lid is producable by a complete or partial severing or detaching of one or more lid portion elements along one or several material bonded predetermined breaking locations. The sealing foil of the cover lid comprises, apart from the sealing layer, at least two metal foils interconnected by a synthetic material layer located between same, whereby the metal foils are aluminum foils, which are interconnected with each other by a polyethylene layer.

The general nature of each of Thorp and Jacke has been discussed adequately in previous papers, and it is not believed to be necessary to repeat those discussions.

First, Applicants note that claim 29 recites “A fuel can.” Nothing in Thorp or Jacke, even if considered in combination, would teach or suggest a fuel can.

Taking Thorp first, that patent does not teach or suggest a fuel can: Thorp only discusses a can suitable for beverages. See, for example, the following portions of Thorp:

- Column 1, lines 25-30: “Such a closure incorporating means for both full-opening and partial-opening thereof, would allow the consumer of a beverage, for example, to either drink, pour, or spoon from a fully-opened container or drink or pour from a partially-opened container.” (Emphases added.)
- Column 4, lines 17-24: “The opening 50 permits use of a straw in the case where the product is liquid, such as a beverage or semi-liquid, such as a frozen or semi-frozen consumable product. The opening may also be used where desired for pouring and drinking.” (Emphases added.)

Jacke, too, does not teach or suggest a fuel can. Jacke discusses a self-opening closure for a container such as a bottle or a can. See, for example, the following portions of Jacke:

- Column 1, lines 13-15: “This disclosure relates to a closure for a container such as a bottle, can, or the like...” (Emphasis added.)
- Figure 1 shows a bottle which looks like a soda bottle.

Nothing in Thorp or Jacke, whether considered either separately or in any permissible combination (if any) would teach or suggest a fuel can. The Examiner alleges (see page 2 of the Office Action) that Figure 1 of Thorp shows a fuel can, but there is plainly no teaching of such, as Figure 1 of Thorp merely shows “a container having a closure member” (column 2, lines 5-6) and not a fuel can for the reasons noted above. Applicants note from *KSR*:

... [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some **rational underpinning** to support the legal conclusion of obviousness. MPEP 2141.III, quoting *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007). (Emphasis added.)

A conclusion that Thorp or Jacke, even in combination, would teach or suggest a fuel can is not supported by a rational underpinning, for the reasons set forth above, but also for other reasons as well. For example, the Examiner also alleges that Thorp shows that its container has “a fuel filling.” The Examiner points to element 32 of Figure 2 of Thorp (see page 2 of the Office Action); however, element 32 merely indicates “contents” which are removed by a “consumer” and therefore cannot *rationally* be considered as a “fuel filling” since a fuel filling would not be “removed” by a consumer. See column 2, lines 58-60 of Thorp, which states that “The closure 16 permits the consumer to select more than one type or form of opening for removing the contents indicated at 32 in the drawing” (emphasis added.)

Applicants note that at paragraph 32 of the Office Action, the Examiner states:

Applicant argues that Thorp allows the contents to be dispensed from the container whereas the applicant's invention requires the contents to remain within. However, when Thorp is not pouring the contents, they are within the container and therefore meet the claim requirements.

However, these comments of the Examiner do not articulate a *rational underpinning* as required by *KSR* for why the container of Thorp is a "fuel can" or how the contents 32 of Thorp could rationally be considered to be a "fuel filling" if the contents are *removed* by a consumer just as a *beverage* would be removed and consumed. Jacke does not help the Examiner's position, as explained above.

By virtue of the features of claim 29, fuel cans can be realized which can be directly employed as a heat source, e.g., as a burner for a stove or as a light source, with a desired rating and combustion duration, which are economical to produce, safe in operation, and cause relatively little waste (see, e.g., page 3, lines 9-13 of the present specification.<sup>1</sup>) Thus, Applicants submit, since an underpinning of the Examiner's conclusion of obviousness is not rational, the rejection on obviousness cannot stand. There are other reasons as well that the rejection on obviousness should not stand.

One of those reasons is that claim 29 recites "a cover lid which is formed by a sealing foil and which by sealing onto a flange like rim of the can body is permanently connected to the can body," wherein "the sealing foil of the cover lid comprises, apart from the sealing layer, at least two metal foils interconnected by a synthetic material layer located between same, whereby the metal foils are aluminum foils, which are interconnected with each other by a polyethylene layer." Nothing in Thorp or Jacke, even if considered in combination, would teach or suggest these features.

---

<sup>1</sup>It is of course to be understood that the references to various portions of the present application are by way of illustration and example only, and that the claims are not limited by the details shown in the portions referred to.

First, as Applicants explained in previous papers, Thorp and Jacke, even if considered in combination, do not teach or suggest a can closed with a sealing foil. Also, in the present invention (see, e.g., Fig. 22), the sealing foil of the claimed invention has the following structure:

- metal foil
- synthetic material layer
- metal foil
- sealing layer

Also in claim 29, the sealing foil is permanently connected onto a flange like rim of the can body.

Jacke discusses a closure of a container having the following structure as shown in the figures:

- top layer (31, e.g. metal)
- plastic film (33)
- sealant (32)
- inside layer (30)
- cork seal (27)

The Examiner concedes at page 3 of the Office Action that Thorp does not disclose the above-noted features of claim 29, and alleges that Jacke discloses them. However, Jacke does not disclose a sealing foil, because cork seal 27 of Jacke cannot seal the closure itself. According to Jacke, sealing is achieved by crimping the closure. The alleged sealing foil of Jacke is in between the layers to provide connectivity, but this does not make it a sealing foil. A cork seal according to Jacke would be unsuitable for a fuel can, as it burns upon use. Consequently, the closure of Jacke (i) differs from that of the claimed invention, (ii) is not suitable for the present invention, and (iii) is connected differently compared to the claimed invention. Thus, combining Thorp with Jacke would result in a different device which is *unsuitable as a fuel can*. Again, the Examiner's rejection on obviousness is not supported by

a *rational underpinning*, as required by *KSR*. Furthermore, when applying the teaching of Jacke, the container is not fully opened as can be seen from Fig. 6. The cork seal (27) remains and has to be removed separately.

Also, neither Thorp, Jacke, nor any combination thereof would teach or a flange-like rim of the can body, as recited in claim 29.

By virtue of the features of claim 29, a fuel can is provided which can be easier and cheaper to manufacture, and easier to handle, compared to prior art fuel cans. Upon manufacturing, it is possible to connect the can body and sealing foil by sealing only. No mechanical forming (crimping or the like) as an additional production step is required.

For at least the foregoing reasons, Applicants submit that claim 29 is patentable over Thorp and Jacke, whether considered either separately or in any permissible combination (if any).

Independent claims 51-53 recite features which are similar in many relevant respects to those discussed above in connection with claim 29. Accordingly, claims 51-53 are believed to be patentable for at least the same reasons as discussed above in connection with claim 29.

#### The dependent claims

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

With respect to claim 56 in particular, Applicants noted the following in the previous response:

Claim 56 recites a use of the fuel can as a thermal, heat, or light source, in particular as a burner for a stove or as a lamp.

In this regard Applicants note paragraph 23 of the Office Action, which states: “Regarding Claim 56, Thorp discloses a use fuel can as a thermal, heat or light source (Figure 1).”

However, Applicants cannot follow the Examiner’s reasoning; Applicants do not understand where in Figure 1 of Thorp such features are shown. It is believed that Figure 1 of Thorp does not disclose such use. Furthermore, column 1, line 25 of Thorp discloses the use for storing beverages. It is respectfully submitted that the reasoning the Examiner provides in paragraph 23 of the Office Action is non-rational, and therefore that the Examiner has not made out a proper basis for an obviousness rejection under *KSR*...

In response, the Examiner states at page 10 of the Office Action that claim 56 is an intended use claim. Applicants still submit that it would be non-rational to conclude that one could use the beverage container of Thorp as a thermal, heat, or light source, or as a burner for a stove or as a lamp. Nevertheless, Applicants have now added claim 57, which recites a heat and light source comprising the fuel can according to one of claims 29 and 51. Applicants submit, for the same reasons as above, that Thorp does not teach or suggest this, and neither does Jacke, even if those two patents were to be considered together. Accordingly, claim 57 is seen to be clearly allowable.



### **Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants note their written request for an Interview set out above.

Respectfully Submitted

/Raymond A. DiPerna/  
Raymond A. DiPerna  
c/o Ladas & Parry LLP  
26 West 61<sup>st</sup> Street  
New York, New York 10023  
Reg. No. 44,063  
Tel. No. (212) 708-1950